

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:LM:CTM:LA:2:POSTF-113106-02
KHAnkeny

date: April 13, 2002

to: Gladina S. Arcinas, Revenue Agent, LMSB

from: Katherine H. Ankeny, Attorney, LMSB

subject: **Powers of Attorney for Dissolved Partnerships**

This memorandum responds to your memoranda requesting assistance, dated February 25, 2002 and March 7, 2002, as well as your electronic mail, dated March 7 and 18. This memorandum should not be cited as precedent.

ISSUES

(1) For the purpose of examining the books and records of two dissolved TEFRA partnerships, [REDACTED] and [REDACTED] (the Partnerships), how should you draft the powers of attorney?

(2) Which partners should sign the powers of attorney?

(3) Did [REDACTED] and [REDACTED] remain the tax matters partners after the Partnerships dissolved?

(4) Prior to receiving valid powers of attorney, if you received information about the Partnerships from [REDACTED], which acquired the Partnerships, but you did not disclose the Partnerships' returns or return information, would you violate section 6103?

CONCLUSIONS

(1) In Part 1, line 5 of the each power of attorney, you should type, "This power of attorney shall be given effect for the purposes of subchapter C of chapter 63 (TEFRA unified audit and litigation procedures)." Similarly, in Part 1, line 3, you should specify that the tax form number is "1065 and consequential adjustments."

(2) All of the partners in each Partnership should sign that Partnership's power of attorney, and the capacity of each officer signing the power of attorney should be fully described.

(3) [REDACTED] and [REDACTED] remained the tax matters partners after the Partnerships dissolved.

(4) If you received information about the Partnerships from [REDACTED], but you did not disclose any of the Partnerships' returns or return information, you would not violate section 6103.

FACTS

Both Partnerships were TEFRA partnerships. Their principal place of business was California. On [REDACTED], after the Partnerships were sold to an unrelated corporation, [REDACTED], the Partnerships were dissolved. You are auditing the Partnerships' final returns.

Before it was dissolved, [REDACTED] was owned:

[REDACTED] %	[REDACTED]	General Partner and Tax Matters Partner
[REDACTED] %	[REDACTED]	General Partner
[REDACTED] %	[REDACTED]	Limited Partner

Before it was dissolved, [REDACTED] was owned:

[REDACTED] %	[REDACTED]	General Partner and Tax Matters Partner
[REDACTED] %	[REDACTED]	General Partner
[REDACTED] %	[REDACTED]	Limited Partner

[REDACTED], an accountant with [REDACTED], sent you powers of attorney for both Partnerships.

On the power of attorney for [REDACTED], the tax matter is listed as "Income" for the period "[REDACTED] - [REDACTED]." No tax form number is listed. The power of

attorney is signed by [REDACTED] and [REDACTED]. Their titles are jointly listed as "EVP & CFO." Apart from the taxpayer's name, the powers of attorney for [REDACTED] and [REDACTED] are identical.

In her cover letter enclosing the powers of attorney, [REDACTED] stated that the powers of attorney had been signed by an officer of the tax matters partner of both [REDACTED] and [REDACTED].

You sent your first appointment letter concerning the audit of the Partnerships on December 17, 2001. [REDACTED] told you that the tax matters partners, [REDACTED] and [REDACTED], are still conducting business. You have not yet sent the notices of beginning of an administrative proceeding.

ANALYSIS

(1) The Powers of Attorney Should Expressly Be Given Effect for TEFRA Purposes.

In drafting new powers of attorney, you should specify that the powers of attorney are to be given effect for TEFRA purposes. Sec. 301.6223(c)-1(e), Proced. & Admin. Regs. To do this, we recommend that you type into Part 1, line 5 of each power of attorney as a specific act authorized: "This power of attorney shall be given effect for the purposes of subchapter C of chapter 63 (TEFRA unified audit and litigation procedures)." Similarly, you should specify in Part 1, line 3 that the tax form number is "1065 and consequential adjustments."

Section 301.6223(c)-1(e)(2), Proced. & Admin. Regs., provides that a power of attorney specifically for TEFRA purposes must be furnished to the Service for TEFRA proceedings that begin on or after January 2, 2002. Section 301.6223(c)-1(e)(3) adds that an existing power of attorney by a partner will not be given effect for TEFRA purposes unless the partner specifically requests that the power be given such effect. The powers of attorney provided by [REDACTED] failed to do this.

(2) All of the Partners in Each Partnership Should Sign That Partnership's Power of Attorney, and the Capacity of Each Officer Signing the Power of Attorney Should Be Fully Described.

We also recommend that all of the partners in each Partnership sign that Partnership's power of attorney. Sec. 601.503(c)(6), Statement of Proced. Rules.

According to [REDACTED], the tax matters partner of each Partnership signed the powers of attorney. [REDACTED] may have thought that only the tax matters partner need sign the power of attorney because, under the California Uniform Limited Partnership Act, a general partner can bind a limited partnership in "winding up partnership affairs" after the partnership dissolves. Cal. Corp. Code § 15685(a) (Deering 2001). We do not recommend relying on this provision. First, in signing the power of attorney, the general partner may be viewed as winding up its own tax liability, not "partnership affairs." Second, it is unclear whether a general partner may still be "winding up" a partnership's affairs more than the two years after the partnership dissolved. Instead, we recommend the cautious approach, which is that all the partners sign the power of attorney.

The issue remains, however, as to who may execute the power of attorney for each partnership that is a partner in the Partnerships. Under Procedural Rule § 601.503(c)(5), in the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that they have such authority.

Under California law, each general partner in a limited partnership is an agent of the partnership for the purpose of its business. "Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business . . . binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority." Cal. Corp. Code § 16301 (Deering 2001).

Thus, a general partner or a partner authorized by the partnership agreement to execute the power of attorney may bind each partnership that is a partner in the Partnerships. If that partnership is a TEFRA partnership, then the tax matters partner should generally execute the power of attorney.

For example, the power of attorney for [REDACTED] [REDACTED] should be signed by the tax matters partners of [REDACTED] and of [REDACTED], assuming these partnerships are TEFRA partnerships.

The signature block for [REDACTED] is more involved because [REDACTED], which was one of

██████████'s general partners and its limited partner, was also dissolved in ██████████. We again advise the cautious approach. The power of attorney should be signed by the tax matters partner of ██████████, assuming it is a TEFRA partnership. It should also be signed by the tax matters partners of both the partnerships that are partners in ██████████. In other words, the power of attorney should also be signed by the tax matters partners of ██████████ and of ██████████.

In addition, we recommend that the capacity of the officer signing on behalf of each tax matters partner should be completely described. The capacity of the officers who signed the powers of attorney provided by ██████████ is unclear. ██████████ and ██████████ signed both powers of attorney as "EVP & CFO." We do not know which man held which position in which partnership.

(3) ██████████ and ██████████
Remained the Tax Matters Partners after the Partnerships Dissolved.

You asked if the tax matters partners are valid. We assume you are asking if ██████████ and ██████████ remained the tax matters partners after the ██████████ dissolved.

The dissolution of the Partnerships would not affect the designation of ██████████ and ██████████ as the tax matters partners. The designation of a tax matters partner terminates if: the tax matters partner liquidates or dissolves; the partnership items of the tax matters partner become nonpartnership items; the tax matters partner resigns; another tax matters partner is designated; or the partnership revokes the designation of the tax matters partner. Sec. 301.6231(a)(7)-1(1), Proced. & Admin. Regs. Absent those events, ██████████ and ██████████ remain the tax matters partners.

(4) If You Received Information from ██████████ Without Disclosing Any of the Partnerships' Returns or Return Information, You Would Not Violate Section 6103.

We assume that ██████████, which acquired the Partnerships, has custody of the Partnerships' books and records and has invited you to review those books and records.

Section 6103(a) generally prohibits the disclosure of returns and return information. It does not prohibit the receipt of return and return information from third parties. IRM 1.3.3.1.3(1). If you received information from [REDACTED] without disclosing any of the Partnerships' returns or return information, you would not violate section 6103.

However, we do recommend that you exercise great care not to inadvertently disclose returns or return information and that you document your efforts. For example, you should document that [REDACTED] contacted you about providing Partnership information.

We also note that the IRS employees engaged in examining the partnerships may disclose return information of the partnership to [REDACTED], only as authorized by the Code. For example, depending upon the circumstances, such disclosures might be authorized by section 6103(k)(6) and Treas. Reg. § 301.6103(k)(6)-1 (disclosures necessary to obtain information not otherwise reasonably available).

This memorandum may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Area Counsel
(Communications, Technology and
Media: Oakland)

By: _____
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Attorney (LMSB)